

EXPLANATORY MEMORANDUM TO
THE INSOLVENCY ACT 1986 (AMENDMENT) ORDER 2015

2015 No. 922

1. This explanatory memorandum has been prepared by the Insolvency Service and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1. The Insolvency Act 1986 (Amendment) Order 2015 (“the Order”) makes amendments to section 267(4) of the Insolvency Act 1986 (“the Act”). The Order increases the minimum level at of which a creditor may petition for an individual’s bankruptcy.

3. Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments

3.1. None

4. Legislative Context

4.1. The Act sets out the minimum level that a creditor can petition for an individual’s bankruptcy. The current level of £750 was set in 1986. The Act permits the Secretary of State to increase this level by Order, made under the affirmative procedure.

5. Territorial Extent and Application

5.1. This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1. The Minister for Employment Relations and Consumer Affairs has made the following statement regarding Human Rights:

6.2. In my view the provisions of the Insolvency Act 1986 (Amendment) Order 2015 are compatible with the Convention rights.

7. Policy background to the instrument

7.1. The bankruptcy levels were last set in 1986. The current low level has led to bankruptcy proceedings being initiated in disproportionate circumstances when there are more suitable options available to creditors such as pursuing a claim through the small claims court, with enforcement remedies that include an attachment of earnings order or a charging order on a debtor’s property. Bankruptcy is the most severe of debt recovery procedures, imposing significant costs on a debtors’ estate. It should be

used as a last resort where the level of debt justifies such a recovery method.

- 7.2.** In July 2011, the Consumer Credit and Personal Insolvency Review¹ stated that there was a need to look at increasing the level of debt on which a petition could be brought, so that small levels of debt could not in future bring with them the disproportionate threat of bankruptcy.

8. Consultation Outcome

- 8.1.** A Call for Evidence was launched in August 2014 covering both changes to the Debt Relief Order regime and the creditor petition limit. Meetings were also held with a range of stakeholders. Creditors, business organisations, the judiciary, advice bodies and other representative bodies were the main respondents.
- 8.2.** On the question of what the appropriate debt level for a creditor's petition should be, a total of 50 responses were received. The majority of respondents believed it should be increased significantly above £750, with suggestions ranging from £1,000 up to £10,000. Most favoured £3,000 or £5,000.
- 8.3.** Under this Order, the petition level has been set at £5,000. This represents an appropriate balance between the interests of a debtor and their creditors, recognising the significant impact bankruptcy can have on a person and their family and the other options available to creditors to enforce small debts.

9. Guidance

- 9.1.** A press notice will be issued before the change comes into effect and key stakeholders contacted directly. Insolvency Service publications, available on line, will be updated to reflect the change. Charities and voluntary bodies who give advice to debtors regarding insolvency will need to be aware of the change.

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31840/11-1063-consumer-credit-and-personal-insolvency-responses.pdf

10. Impact

- 10.1.** An impact assessment, Equality Impact Assessment, Justice Assessment and Family Test Assessment have been produced and will be available via the Insolvency Service website.
- 10.2.** It is expected that there will be fewer bankruptcy cases going through the courts, a Justice Impact test which has been carried out which was approved by Her Majesty's Courts and Tribunals Services.
- 10.3.** There will be an impact on creditors in that they will no longer be able to petition for a debtor's bankruptcy for low levels of debt. However, there are other recovery methods available for small debts, for example the money claims online process, which are lower in cost than petitioning for bankruptcy.
- 10.4.** Charities, voluntary bodies and others who give advice to debtors regarding insolvency will need to be made aware of the change.

11. Regulating small business

- 11.1.** This instrument does not impose any additional regulation on small business.

12. Monitoring and Review

- 12.1.** The Government will monitor this change and will review after 2 years whether the new level is set at the correct level or any further increase or decrease is required.

13. Contact

- 13.1.** Dean Beale, Head of Policy at The Insolvency Service (Tel: 0207 291 6740 or e-mail: Policy.Unit@insolvency.gsi.gov.uk) can answer any queries regarding this Order.